

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JAN 28 1997

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	CC Docket No. 96-61
Interstate, Interexchange Marketplace	)	
	)	
Implementation of Section 254(g) of the	)	
Communications Act of 1934, as amended	)	

OPPOSITION OF BELL ATLANTIC<sup>1</sup>  
TO AD HOC's PETITION FOR RECONSIDERATION

The petition for reconsideration filed by the Ad Hoc Telecommunications Users Committee should be denied.<sup>2</sup> Ad Hoc's petition asks the Commission to detariff exchange access services provided by long distance carriers. This proceeding, however, dealt solely with the regulation of interexchange services, and not the regulation of exchange access. As such, Ad Hoc's petition is beyond the scope of this proceeding and cannot be considered here. Moreover, even if the issue were to be properly raised in the context of some future proceeding, the Commission could not reasonably grant relief to some access providers without granting relief to all such providers.

1. The issues in this proceeding are narrowly limited to those addressing the regulation of interexchange services, and both the notice and order focus solely on an analysis of the

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

<sup>2</sup> Petition for Clarification and Partial Reconsideration of the Ad Hoc Telecommunications Users Committee, et al. (filed Dec. 23, 1996).

interexchange marketplace. Indeed, the Commission went so far as to exclude even some types of interexchange services, such as international interexchange services, so that issues unique to those services can be addressed separately.<sup>3</sup> Ad Hoc's petition, however, deals not with the regulation of interexchange services, but with the regulation of exchange access services. As such, it is beyond the scope of this proceeding and cannot be considered.<sup>4</sup>

Ad Hoc's only answer is to claim that exchange access services provided by long distance carriers should be addressed here because a long distance carrier may choose to offer both exchange access and long distance to the same customer.<sup>5</sup> But this is no answer at all. The simple fact remains that exchange access is a different service that is not the subject of this proceeding, and Ad Hoc's petition cannot be considered here.

2. Moreover, even if the detariffing of exchange access were to be properly raised in the context of some future proceeding, the Commission could not reasonably detariff the exchange access services of some providers, such as those that have been classified as "non-dominant," without detariffing such services for all providers, including those classified as "dominant." As the Supreme Court has pointed out, it would not make "sense" to require only the firm "most

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<sup>3</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC 96-61, Second Report and Order, ¶ 98 (rel. Oct. 31, 1996).

<sup>4</sup> *See, e.g., Geographic Partitioning and Spectrum Disaggregation by CMRS Licensees*, WT Docket No. 96-148, Report and Order and Further Notice of Proposed Rulemaking, ¶29, n.93 (rel. Dec. 20, 1996) (Commission denied consideration of an issue because it was "out of the scope" of the proceeding).

<sup>5</sup> Ad Hoc Petition at 5-6.

likely to be a price leader” to file costs and rates in advance.<sup>6</sup> Indeed, the Commission’s own experience proves the point. As Professor MacAvoy has explained, requiring AT&T, as the dominant carrier, to file tariffs for interexchange services provided a “benchmark” for the rest of the industry to use in setting prices.<sup>7</sup> The result was to limit competition based on price, and to produce a “stability of market shares based on adherence to that tariff.”<sup>8</sup>

Ad Hoc also argues that carriers should not be required to disclose the terms and conditions of individually negotiated customer arrangements. On this narrow issue, Ad Hoc is right. When carriers compete to provide individual service arrangements to customers, publication of such information will only inhibit competition. Again, however, any carriers classified as dominant could not be excluded from any relief that may ultimately be granted. If they were, the so-called dominant carrier’s prices would serve as a price umbrella, allowing competitors to price just under the dominant carrier’s price rather than bid aggressively to obtain the business. The result would be to deny customers the benefits of full-fledged price competition, and to affirmatively harm the public interest.

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<sup>6</sup> *MCI Telecommunications Corp. v. AT&T*, 114 S. Ct. 2223, 2233 (1994). *See also Southwestern Bell Corp. v. FCC*, 43 F.3d 1515, 1520 (D.C. Cir. 1995) (citing the Supreme Court view that the logic behind eliminating a tariff requirement applies even more strongly to dominant carriers.)

<sup>7</sup> P. MacAvoy, *The Failure of Antitrust and Regulation to Establish Competition in Markets for Long-Distance Competition in Markets for Long-Distance Telephone Companies*, Yale School of Management Working Paper Series C, No. 44 at 93 (Nov. 1995).

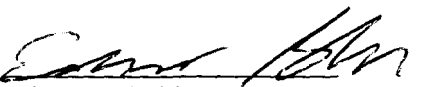
<sup>8</sup> *Id.*

CONCLUSION

For the foregoing reasons, the petition for reconsideration filed by the Ad Hoc Telecommunications Users Group should be denied.

Respectfully submitted,

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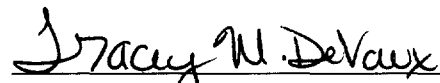
  
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January 28, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 1997 a copy of the foregoing  
"Opposition of Bell Atlantic to Ad Hoc's Petition for Reconsideration" was sent by first class  
mail, postage prepaid, to the parties on the attached list.

  
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